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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/261,197	03/03/1999	BRIAN E. MCBRIDE	53921/56	7444

7590

03/13/2002

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EXAMINER

STEVENS, ROBERTA A

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 03/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/261,197

Applicant(s)

MCBRIDE, BRIAN E.

Examiner

Roberta A Stevens

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2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 1999.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 6, 8, 10, 11, 13, 14, 16, 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ozaki (U.S. 5502749).

Ozaki teaches (abstract) a method and apparatus for generating digital traffic for use in testing a multi-port communications device comprising: generating a reference pattern defining the digital traffic and generating a plurality of traffic streams from the reference pattern, whereby the plural traffic streams are used for loading respective input ports of the communications device.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 5, 7, 9, 12, 15, 17, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ozaki.

Regarding claims 5 and 17, as mentioned above Ozaki teaches generating a plurality of traffic streams from the

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reference pattern.

Ozaki does not teach ATM. However ATM is well known in the art and it would have been obvious to one of ordinary skill in this art to adapt to Ozaki's system ATM to take advantage of testing ports in the asynchronous environment.

Regarding claims 3, 7, 9, 12, 15, 19 and 21 as for the continuous device effecting statistical multiplexing, it would have been obvious to one of ordinary skill in this art that this would effect statistical multiplexing because the device has multiple ports.

5. Claim 22-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crossland (U.S. 5576873) in view of Ozaki.

Crossland teaches (abstract) a digital data stream replicating device comprising: an input Port for receiving an input continuous digital data stream at an input transmission rate; broadcast means for replicating the input digital data stream N times; N out put ports for transmitting each such replicated digital data stream through a separate output port at an output transmission rate at least equal to the input transmission rate

Crossland does not teach a delay means.

Brown teaches (figure 4A) a delay means (410) for introducing a relative delay for each output. It would have been obvious to one of ordinary skill in this art to adapt to Crossland's system Brown's delaying means to represent different phases between data streams.

6. Claims 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ozaki in view of Crossland, and further in view of Brown.

Ozaki teaches (abstract) a performance testing device comprising a traffic generator for generating a continuous digital data stream and an input port for receiving the continuous

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digital data stream at an input transmission rate.

Ozaki does not teach replicating input data streams.

Crossland (abstract) broadcast means for replicating the input digital data stream N times; N output ports for transmitting each such replicated digital data stream through a separate output port at an output transmission rate at least equal to the input transmission rate.

Crossland does not teach a delay means.

Brown teaches (figure 4A) a delay means (410) for introducing a relative delay for each output. It would have been obvious to one of ordinary skill in this art to adapt to Crossland's system Brown's delaying means to represent different phases between data streams.

### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Smallcomb (U.S. 6247158 B1) and Wolf (U.S. 5392314) are cited to show the state of the art.

5. Any inquiry concerning the communication or earlier communications from the examiner should be directed to Roberta Stevens whose telephone number is (703) 308-6607. The examiner can normally be reached on Monday through Friday from 7:00 am to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor can be reached on (703) 308-6602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

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6. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872-9314

For informal draft communications, please label "PROPOSED" or "DRAFT"

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA. Sixth Floor (Receptionist).

Roberta A. Stevens

Patent Examiner

03-06-02



**ALPUS H. HSU  
PRIMARY EXAMINER**